

**UNITED STATES DISTRICT COURT**  
**DISTRICT OF NEVADA**

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Robert C. Lopez,

Plaintiff,

vs.

Lance Maningo, et al.,

Defendants.

Case No. 2:21-cv-00940-ART-VCF

**ORDER**

APPLICATION TO PROCEED IN FORMA PAUPERIS  
(EFC NO. 4) AND COMPLAINT (ECF NO. 1-1)

Judge Koppe previously denied pro se plaintiff application to proceed in forma pauperis (IFP) because it was incomplete. ECF No. 3. Plaintiff filed a new application to proceed IFP and Judge Koppe recused herself. ECF Nos. 4 and 5. This case was reassigned to me. ECF No. 6. I grant plaintiff's updated application to proceed in forma pauperis. ECF No. 4. I dismiss his complaint without prejudice. ECF No. 1-1.

**DISCUSSION**

Plaintiff's filings present two questions: (1) whether plaintiff may proceed in forma pauperis under 28 U.S.C. § 1915(e) and (2) whether plaintiff's complaint states a plausible claim for relief.

**I. Whether Plaintiff May Proceed In Forma Pauperis**

Under 28 U.S.C. § 1915(a)(1), a plaintiff may bring a civil action "without prepayment of fees or security thereof" if the plaintiff submits a financial affidavit that demonstrates the plaintiff "is unable to

1 pay such fees or give security therefor.” If the plaintiff is a "prisoner" as defined by 28 U.S.C. § 1915(h),  
 2 as amended by the Prison Litigation Reform Act ("PLRA"), he remains obligated to pay the entire fee in  
 3 installments, regardless of whether his action is ultimately dismissed. See 28 U.S.C. § 1915(b)(1) & (2);  
 4 *Castaneda v. Delatoore*, 281 F.3d 844, 847 (9th Cir. 2002). Plaintiff submitted a new application with  
 5 his financial certificate. ECF No. 5. Plaintiff has no money in his account. *Id.* I grant plaintiff’s IFP  
 6 application.

## 7 **II. Whether Plaintiff’s Complaint States a Plausible Claim**

### 8 **a. Legal Standard**

9 Since I grant plaintiff’s IFP application, I review plaintiff’s complaint to determine whether the  
 10 complaint is frivolous, malicious, or fails to state a plausible claim. 28 U.S.C. § 1915(e)(2)(B). Federal  
 11 Rule of Civil Procedure 8(a)(2) provides that a complaint must contain “a short and plain statement of  
 12 the claim showing that the [plaintiff] is entitled to relief.” Rule 8 ensures that each defendant has "fair  
 13 notice of what the plaintiff’s claim is and the grounds upon which it rests." *Dura Pharms., Inc. v.*  
 14 *Broudo*, 544 U.S. 336, 346, 125 S. Ct. 1627, 161 L. Ed. 2d 577 (2005). The Supreme Court’s decision in  
 15 *Ashcroft v. Iqbal* states that to satisfy Rule 8’s requirements, a complaint’s allegations must cross “the  
 16 line from conceivable to plausible.” 556 U.S. 662, 680 (2009) (quoting *Bell Atlantic Corp. v. Twombly*,  
 17 550 U.S. 544, 547, (2007)). Rule 12(b)(6) of the Federal Rules of Civil Procedure provides for  
 18 dismissal of a complaint for failure to state a claim upon which relief can be granted. A complaint  
 19 should be dismissed under Rule 12(b)(6), “if it appears beyond a doubt that the plaintiff can prove no set  
 20 of facts in support of her claims that would entitle him to relief.” *Buckey v. Los Angeles*, 968 F.2d 791,  
 21 794 (9th Cir. 1992).

22 “[A] pro se complaint, however inartfully pleaded, must be held to less stringent standards than  
 23 formal pleadings drafted by lawyers.” *Erickson v. Pardus*, 551 U.S. 89, 94 (2007) (quoting *Estelle v.*  
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1 *Gamble*, 429 U.S. 97, 106 (1976)). If the Court dismisses a complaint under § 1915(e), the plaintiff  
 2 should be given leave to amend the complaint with directions as to curing its deficiencies, unless it is  
 3 clear from the face of the complaint that the deficiencies could not be cured by amendment. *Cato v.*  
 4 *United States*, 70 F.3d 1103, 1106 (9th Cir. 1995).

#### 5 **b. Complaint**

6 Plaintiff alleges in his complaint that he has been incarcerated since October 2020 for assault  
 7 with a deadly weapon in a domestic violence situation. ECF No. 1-1. Plaintiff alleges that his  
 8 incarceration violates the Sixth Amendment right to a speedy trial. *Id.* at 4. Plaintiff appears to sue his  
 9 attorney Lance Maningo, District Attorneys Melanie Scheible and Steve Wolfson (spelled incorrectly),  
 10 Judge Cristina Silva, and Sheriff Joe Lombardo. It appears that plaintiff may have been released since he  
 11 filed this case, given that the Clerk's notice regarding the reassignment of this case has been returned as  
 12 undeliverable. ECF No. 8.

13 There are several issues with plaintiff's complaint, which I analyze below.

#### 14 **i. The *Younger* Doctrine and *Heck***

15 The United States Supreme Court has found that absent extraordinary circumstances, federal  
 16 courts must not interfere with pending state criminal prosecutions, even if the civil litigant alleges  
 17 violations of his constitutional rights. *Younger v. Harris*, 401 U.S. 37, 43 (1971). Pursuant to the  
 18 *Younger* abstention doctrine federal courts may not stay or enjoin pending state criminal court  
 19 proceedings, nor grant monetary damages for constitutional violations arising from them. *Mann v. Jett*,  
 20 781 F.2d 1448, 1449 (9th Cir. 1986). "Younger principles apply to a claim for damages based on  
 21 constitutional challenges which can be asserted in pending state proceedings that implicate important  
 22 state interests, and that the correct disposition is to defer – not to dismiss – when damages are at issue."  
 23 *Gilbertson v. Albright*, 381 F.3d 965, 982 (9th Cir. 2004). The United States Supreme Court has  
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1 specifically addressed false arrest claims finding that, “[i]f a plaintiff files a false-arrest claim before he  
2 has been convicted . . . it is within the power of the district court, and in accord with common practice,  
3 to stay the civil action until the criminal case . . . is ended.” *Wallace v. Kato*, 549 U.S. 384, 393-94  
4 (2007). Once the state proceeding has run its course, the Court can decide whether the damages action  
5 should proceed. “If the plaintiff is ultimately convicted, and if the stayed civil suit would impugn that  
6 conviction, [*Heck v. Humphrey*, 512 U.S. 477, (1994)] will require dismissal; otherwise, the civil action  
7 will proceed, absent some other bar to suit.” *Wallace*, 549 U.S. at 394.

8         When plaintiff drafted his complaint, it appears that his charges were ongoing given that he  
9 claimed the defendants violated his right to a speedy trial. Pursuant to *Younger* and *Wallace*, analyzed  
10 above, this Court must stay this case pending notice from the plaintiff that his criminal proceedings are  
11 completed. See *Younger*, 401 U.S. at 44 and *Wallace*, U.S. at 394. However, since it appears that  
12 plaintiff has been released, I will move on to the next issue.

13         If plaintiff has not been released, and he is not convicted, or if his conviction is overturned on  
14 appeal, then he must show that he has standing to bring a § 1983 claim to challenge the alleged unlawful  
15 events that led to his current confinement. Plaintiff’s claims challenge the validity of his confinement  
16 due to lack of due process and probable cause. Plaintiff may raise these allegations in a habeas corpus  
17 proceeding. This would require that Plaintiff file a habeas corpus petition and an in forma pauperis  
18 application in a new action, meaning he may not file the petition for habeas corpus in this action.

19         While a § 1983 claim cannot be used to vacate convictions, it can be used to “recover damages  
20 for allegedly unconstitutional conviction.” *Heck v. Humphrey*, 512 U.S. 477, 486 (1994). The “plaintiff  
21 must prove that the conviction or sentence has been reversed on direct appeal, expunged by executive  
22 order, declared invalid by a state tribunal authorized to make such determination, or called into question  
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1 by a federal court's issuance of a writ of habeas corpus." *Id.* at 486-487. Plaintiff gives no indication in  
 2 his complaint that his conviction has been challenged or overturned by any court.

### 3 **ii. The Defendants**

4 Judges are entitled to absolute judicial immunity for acts performed in their official capacity. See  
 5 *In re Castillo*, 297 F.3d 940, 947 (9th Cir. 2002). Judicial immunity is "a 'sweeping form of immunity'  
 6 for acts performed by judges that relate to the 'judicial process.'" *Id.* (citations omitted) "This absolute  
 7 immunity insulates judges from charges of erroneous acts or irregular action, even when it is alleged that  
 8 such action was driven by malicious or corrupt motives, ... or when the exercise of judicial authority is  
 9 'flawed by the commission of grave procedural errors.'" *Id.* (citations omitted). "Judicial immunity  
 10 discourages collateral attacks on final judgments through civil suits, and thus promotes the use of  
 11 'appellate procedures as the standard system for correcting judicial error.'" *Id.* (citation omitted). "The  
 12 judicial or quasi-judicial immunity available to federal officers is not limited to immunity from  
 13 damages, but extends to actions for declaratory, injunctive and other equitable relief." *Moore v.*  
 14 *Brewster*, 96 F.3d 1240, 1243 (9th Cir. 1996).

15  
 16 District Attorneys are also immune from suit in this case. Prosecutors are entitled to immunity  
 17 from Section 1983 suits "when [they] act within the scope of [their] prosecutorial duties." *Imbler v.*  
 18 *Pachtman*, 424 U.S. 409, 420, 96 S. Ct. 984, 47 L. Ed. 2d 128 (1976). Although public defenders (or  
 19 appointed counsel) are not entitled to immunity, it is well-established that a public defender is not a  
 20 person who acts "under color of law" within the meaning of § 1983, *Polk Cnty. v. Dodson*, 454 U.S. 312,  
 21 325, 102 S. Ct. 445, 70 L. Ed. 2d 509 (1981). When a public defender is "performing a lawyer's  
 22 traditional functions as counsel to a defendant in a criminal proceeding," a § 1983 claim does not lie. *Id.*  
 23 A defendant cannot be held liable under § 1983 solely based on supervisory responsibility or position.  
 24 *Monell v. New York City Dept. of Social Services*, 436 U.S. 658, 694 n.58, 98 S. Ct. 2018, 56 L. Ed. 2d  
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1 611 (1978). "Because vicarious liability is inapplicable to ... § 1983 suits, [plaintiff] must plead that each  
2 government-official defendant, through the official's own individual actions, has violated the  
3 Constitution." *Iqbal*, 556 U.S. at 676; see also *Jones v. Community Redevelopment Agency of City of Los*  
4 *Angeles*, 733 F.2d 646, 649 (9th Cir. 1984) (even pro se plaintiff's must "allege with at least some degree  
5 of particularity overt acts which defendants engaged in" to state a claim).

6 Plaintiff's claim against Judge Silva, apparently the Judge presiding over his case, should be  
7 dismissed as she is entitled to absolute judicial immunity because plaintiff's allegations concern actions  
8 undertaken in the judicial process. Similarly, plaintiff's claims against the district attorney and  
9 prosecutor prosecuting his case and his appointed counsel cannot be liable here because the prosecutor is  
10 immune and the appointed counsel was performing a lawyer's traditional functions. The plaintiff has not  
11 alleged any overt acts taken by the district attorney and the sheriff, so his claims against these  
12 defendants must be dismissed as well.

13 Plaintiff fails to articulate a claim or claims against any defendant. It is possible that these  
14 deficiencies may be cured through amendment. Plaintiff's complaint is dismissed without prejudice.  
15 Plaintiff must file an amended complaint explaining how this Court has jurisdiction over the defendants,  
16 the circumstances of the case, the relief plaintiff seeks, and the law upon which he relies in bringing the  
17 case. The amended complaint must be "complete in and of itself without reference to the superseded  
18 pleading and must include copies of all exhibits referred to in the proposed amended pleading. LR 15-  
19 1(a).  
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21 ACCORDINGLY,

22 I ORDER that plaintiff Lopez's application to proceed in forma pauperis (ECF No. 4) is  
23 GRANTED.

24 I FURTHER ORDER that plaintiff's complaint (ECF No. 1-1) is DISMISSED WITHOUT  
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1 PREJUDICE.

2 I FURTHER ORDER that plaintiff has until Monday, March 27, 2023, to file an amended  
3 complaint addressing the issues discussed above. Failure to timely file an amended complaint that  
4 addresses the deficiencies noted in this Order may result in a recommendation for dismissal with  
5 prejudice.

6 I FURTHER ORDER that if plaintiff files an amended complaint, the Clerk of the Court is  
7 directed NOT to issue summons on the amended complaint. I will issue a screening order on the  
8 amended complaint and address the issuance of summons at that time, if applicable. See 28 U.S.C. §  
9 1915(e)(2).

10 I CAUTION plaintiff that continuing to file duplicative and/or frivolous lawsuits may result in  
11 adverse consequences, including possible sanctions or a finding that he is a vexatious litigant.

### 12 NOTICE

13 Pursuant to Local Rules IB 3-1 and IB 3-2, a party may object to orders and reports and  
14 recommendations issued by the magistrate judge. Objections must be in writing and filed with the Clerk  
15 of the Court within fourteen days. LR IB 3-1, 3-2. The Supreme Court has held that the courts of appeal  
16 may determine that an appeal has been waived due to the failure to file objections within the specified  
17 time. *Thomas v. Arn*, 474 U.S. 140, 142 (1985).

18 This circuit has also held that (1) failure to file objections within the specified time and (2)  
19 failure to properly address and brief the objectionable issues waives the right to appeal the District  
20 Court's order and/or appeal factual issues from the order of the District Court. *Martinez v. Ylst*, 951 F.2d  
21 1153, 1157 (9th Cir. 1991); *Britt v. Simi Valley United Sch. Dist.*, 708 F.2d 452, 454 (9th Cir. 1983).  
22 Pursuant to LR IA 3-1, plaintiffs must immediately file written notification with the court of any change  
23 of address. The notification must include proof of service upon each opposing party's attorney, or upon  
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1 the opposing party if the party is unrepresented by counsel. **Failure to comply with this rule may**  
2 **result in dismissal of the action.**

3 IT IS SO ORDERED.

4 DATED this 23rd day of February 2023.



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6 CAM FERENBACH  
7 UNITED STATES MAGISTRATE JUDGE  
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